IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

OP.No. 13149 of 1999(M)

PETITIONER:

VIJAYA METALS PRIVATE LTD.,
REPRESENTED BY ITS DIRECTOR BINDHU M.P.,
T.D. EAST SANNIDHI ROAD, KOCHI.

BY ADV. SRI.P.B.SURESH KUMAR(QUILON).

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DEPUTY CONSERVATOR OF FORESTS AND AUTHORISED OFFICER, CHALAKKUDY, THRISSUR.**

3. **THE DIVISIONAL FOREST OFFICER, CHALAKKUDY.**

4. **PAULSON, GOPURATHINGAL VEEDU, THATTAMPADI BHAGOM, KARUMALUR KARA, KARUMALUR VILLAGE.**

5. **THE DISTRICT JUDGE, THRISSUR.**

BY ADV. SRI.MVS.NAMBOOTHIRY
SRI.S.SANTOSH KUMAR (PERUNAD)
SRI.S.JAMES VINCENT
SPL.GOVERNMENT PLEADER SMT. SUSHEELA R. BHAT.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 21060/1999 IN O.P. NO. 13149/1999

DISMISSED

20/12/2006. **SD/- A.K.BASHEER, JUDGE.**

EXT.P.1: COPY OF THE COMPLAINT SUBMITTED BY THE COMPANY TO THE SUB INSPECTOR OF POLICE, KALAMASSERY DTD. 21/11/1995.

EXT.P.2: COPY OF THE COMMUNICATION ISSUED BY THE MANAGING DIRECTOR OF THE COMPANY TO THE R.3. DTD. 24/11/1995.

EXT.P.3: COPY OF THE NOTICE NO. C. C2-8079/95 ISSUED BY THE R.3. TO THE PETITIONER DTD. 10/07/1996.

EXT.P.4: COPY OF THE SHOW CAUSE NOTICE NO. C.C. 2.8079/95 ISSUED BY THE R.2. TO THE PETITIONER DTD. 11/08/1998.

EXT.P.5: COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER TO THE R.2. DTD. 07/09/1998.

EXT.P.6: COPY OF THE ORDER PASSED BY THE R.2. DTD. 25/01/1999.

EXT.P.7: COPY OF THE ORDER PASSED BY THE R.5 IN C.M.A. 27/99 DTD. 29/03/1999.

EXT.P.8: COPY OF THE COMMUNICATION NO. CC2.8079/95 ISSUED BY THE R.3. DTD. 10/05/1999.

//TRUE COPY//

prv.

A.K. Basheer, J.

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O.P. No. 13149 of 1999-M

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Dated this the 20th day of December, 2006.

J U D G M E N T

The registered owner of a mini lorry has filed this Original Petition challenging the order of confiscation under Section 61A of the Kerala Forest Act. The Authorised Officer had initially passed Ext.P6 order of confiscation which was later confirmed by the District Court in Ext.P7 order. The prayer in this Original Petition is to issue a writ of certiorari to quash Exts.P6 and P7 orders.

2. Shorn of unnecessary details, the relevant facts may be briefly noticed.

3. On November 21, 1995 the vehicle belonging to the petitioner bearing registration No.KL-7 G 934 was taken into custody by the forest officials along with teak timber . The vehicle and the contraband were produced before the Authorised Officer who issued show cause notice to the petitioner informing him that the vehicle was liable to be confiscated since it was involved in a forest offence. It appears that initially the vehicle was confiscated by the Authorised Officer. But the said order was set aside by the District Court in an appeal preferred by the petitioner. The Authorised Officer was directed to pass fresh orders after affording the petitioner sufficient opportunity to be heard.

4. It was thereafter that Ext.P4 show cause notice was issued. The explanation submitted by the petitioner was duly considered. The Authorised Officer by Ext.P6 order found that those were sufficient materials to show that the vehicle belonging to the petitioner was

involved in illicit felling and removal of timber trees from the reserve forest and that the vehicle was used for the commission of the said offence with the full knowledge and connivance of the petitioner and his driver. The Officer further held that the owner and driver had not taken any reasonable and necessary precaution against the use of the vehicle for committing the offence. Accordingly the Officer found that the vehicle was liable to be confiscated under Section 61A of the Act. A copy of the order passed by the Officer is on record as Ext.P6.

5. As mentioned earlier, the above order was challenged by the petitioner before the District Court as provided under section 61D of the Act. The learned District Judge reconsidered the matter and passed Ext.P7 order holding that the order of confiscation was perfectly legal and valid in the facts and circumstances of the case. Petitioner has preferred this original petition challenging Ext.P6 and P7 orders. .

6. Having heard learned counsel for the petitioner and the learned Special Govt. Pleader (Forests), I am satisfied that Ext.P7 order does not warrant any interference for the reasons stated below.

7. It is admitted by the petitioner that his vehicle was involved in a forest offence. But according to him, he had absolutely no knowledge about the commission of the offence. He had not given consent or permission for using the vehicle to transport the timber as alleged by the Department. It is also contended by the petitioner that the allegation that the offence was committed with the knowledge and connivance of the owner with meticulous preparation, is totally baseless and untrue. Learned counsel takes strong exception to the allegation in Ext.P4 show cause notice, that the contraband (9 pieces of teak) had been attempted to be transported by the petitioner and the

other accused after a meticulous planning and preparation. Learned counsel submits that the allegation in Ext.P4 notice that petitioner had given his consent for perpetration of the above offence is also totally baseless.

8. It is the contention of the petitioner that the appellate authority in Ext.P7 judgment had categorically found that there was no "specific evidence to come to a conclusion that the owner of the vehicle was actively and knowingly involved in the illegal attempt" It is further contended that the original authority also had not found that the petitioner had direct knowledge about the commission of the offence. Learned counsel submits that in the absence of any cogent materials on record to show that petitioner was actually involved in the commission of the offence or that there was atleast some piece of evidence to indicate that he had knowledge or consent about commission of the offence, the vehicle was not liable to be confiscated.

9. In this context learned counsel places reliance on the clauses contained in sub-section (1) of Section 61(b) which deals with issue of show cause notice before confiscation. Sub-section (1) stipulates that no order confiscating any timber, charcoal, firewood, ivory tools, ropes, chains, boats, vehicles or cattle shall be made under section 61A unless the person from whom the same is seized is given a notice in writing informing him of the grounds on which it is proposed to confiscate such timber, charcoal etc. (emphasis supplied) . Learned counsel submits that the order of confiscation in the case on hand is totally vitiated for the sole reason that the grounds mentioned in Ext.P4 that the petitioner had knowledge about the commission of the offence or that it was with his connivance that the offence was committed not

having been established, the very substratem of the offence or charge will fall to the ground. I am afraid, the above contention is totally misconceived. As is clear from sub-clause (1) of Section 61B, the statutory mandate is only that the Authorised Officer has to put the owner on notice informing him of the grounds on which it is proposed to confiscate the vehicle, timber etc. The word “grounds” referred to in sub-clause (a) does not necessarily mean “charge” or gist of the offence as such. The show cause notice is only intended to inform the reasons or grounds on the basis of which the Authorised Officer is likely to take a decision in the matter of confiscation. Sub-clause (b) provides that the owner will be given an opportunity to make a representation in writing in response to the show cause notice. It is further provided that the owner should be given a reasonable opportunity of being heard in the matter. The phraseology '”grounds” referred to in sub-clause (a) is not the cruse of the issue. The explanation that may be given by the owner has to be necessarily considered by the Authorised Officer . He has to be satisfied that in the given facts and circumstances the vehicle, tools , timber etc. are liable to be confiscated. Even if one or any of the grounds referred to in the show cause notice has not been established, confiscation will still be valid, if the Authorised Officer is satisfied that such confiscation is warranted.

10. In this context it is pertinent to note that the petitioner has himself admitted that his vehicle was involved in a forest offence. It is also beyond controversy petitioner's vehicle was seized while it was in charge of his driver. It is also not disputed that the contraband was seized along with the vehicle. It is also on record that the driver had

admitted the offence. The Original Authority and the appellate authority had adverted to all the above aspects. As rightly noticed by the learned District Judge, the petitioner had not placed any material on record to substantiate his contention that he had no knowledge about the commission of the offence. Sub-section (2) of Section 61B only postulates that no order of confiscation shall be made if the Authorised Officer is satisfied that the vehicle, tool, rope etc. was used without the knowledge or connivance of the owner himself or his agent. The entire burden is on the owner to prove his innocence or involvement in the commission of the offence. Learned counsel fairly concedes that the petitioner had not been able to place on record any cogent material to show his non-involvement or to prove his innocence but his contention is that Exts.P6 and P7 orders are liable to be set aside since the grounds referred to in Ext.P4 have not been substantiated by the Department. I am unable to agree with the above proposition of law.

11. Having perused the orders impugned in this writ petition, I am satisfied that no interference is warranted. In my view the learned District Judge had adverted to all the relevant aspects very meticulously and come to the right conclusion .

12. In this context it may also be profitable to refer to a decision rendered by a Division Bench of this Court in State of Kerala v. Mathew (1995 (2) KLT 772), in which it has been held, after referring to some of the earlier decisions on the point, that:

> " the idea behind extension of confiscatory provisions to vehicle etc. is to convey a peremptory and explicit message to the vehicle owners not to allow their vehicles to be used for

depletion of forest wealth. If any vehicle is caught in the nefarious act of carrying illicit forest produce, it is not enough that the owner establishes his innocence alone. If he wants to retrieve his vehicle he must show further that the person who was in charge of vehicle has taken reasonable and necessary precautionary measures against such user of the vehicle. The owner cannot rest with establishing his innocence in the matter. It may be that having succeeded in showing his innocence his failure to establish the next limb might lead to hard consequences to him. Legislature intended, by providing such stringent conditions, to prevent harder consequences for the society and for the posterity." (emphasis supplied).

For the foregoing reasons, the contentions raised by the petitioner are liable to be repelled. I do so.

Original Petition fails. It is accordingly dismissed.

A.K. Basheer
Judge.

an.

A.K.BASHEER, J.

OP.NO.13149/1999
JUDGMENT

20TH DECEMBER, 2006.